

REMARKS / ARGUMENTS

Claim 2 has been canceled without prejudice.

Claims 1, 9 and 15 have been amended.

RE: Rejection under 35 USC 102(e) - Ko

The Examiner's attention is drawn to the amended claim 1. The Applicants respectfully traverse the Examiner's rejections under 35 USC §102(e) over KO with regard to the amended claim 1 for the following reasons.

The cited patent to KO deals with the calibration of an e-VOA, where the attenuation of the e-VOA is initially set to zero (minimum attenuation) and then increased in a number of incremented steps until the calibration is done (please see KO, column 8 line 63 to column 9 line 42).

In contrast, amended claim 1 deals with operating of the e-VOA in case of loss of signal, wherein the operation of the e-VOA is performed in a way opposite to that of KO, and typically opposite to any other known prior art, namely:

if the signal is lost, the attenuation of the e-VOA is set to a substantially maximum attenuation (MaxAtt) (instead of a traditional way of setting the attenuation to a minimum), followed by modulating the attenuation of the eVOA by decreasing and increasing the eVOA attenuation in finite steps until the optical power is detected above the LOS power threshold, or the maximum attenuation (MaxAtt) is reached, i.e. operating the e-VOA in a snooping mode.

Clearly, neither KO, or any other cited prior art provides such mode of operating the e-VOA.

Thus, the Applicant believes that the Examiner's rejections over 102 (e) KO with regard to the amended claim 1 have been overcome, and claim 1 as amended should be allowable.

Other claims in this application either depend on claim 1, or have scope similar to the amended claim 1, and therefore should be allowable.

RE: Rejection under 35 USC 103(a) - Ko and Beine

The Examiner's rejection of claims 11 and 12 under 35 USC 103(a) in view of Ko and Beine has been overcome by the amendments of claim 1, because neither of these references, or their combination has features of the amended claim 1 as described above.

RE: Rejection under 35 USC 102(e) - Scarth

A Declaration under 37 CFR 1.132 is enclosed herewith to prove that any invention disclosed but not claimed in the US Ser. No 10/618,582 to Scarth (2004/0109662 A1, now US patent 6,996,323) was derived from the inventors of this application, and thus this is not the invention "by another". Therefore the rejection under 35 USC 102(e) in view of Scarth has been overcome.

RE: Obviousness-type double patenting

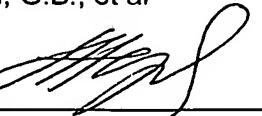
A terminal disclaimer with regard to the US Ser. No 10/618,582 (US patent 6,996,323) is enclosed herewith.

Thus, all requisitions raise by the Examiner have been addressed.

An early allowance of this application is courteously requested.

SCARTH, G.B., et al

By:
Victoria Donnelly
Patent Agent
Reg. No. 44,185



c/o TROPIC NETWORKS INC.
Intellectual Property Department
135 Michael Cowpland Drive
Kanata, Ontario, Canada K2M 2E9

Telephone: (613) 270-6026
Fax: (613) 270-9663
e-mail: victoria.donnelly@tropicnetworks.com